

Congress of the United States
Washington, DC 20510

June 29, 2012

VIA ELECTRONIC TRANSMISSION

Michael E. Horowitz
Inspector General
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Inspector General Horowitz:

Following yesterday's vote to hold the Attorney General in contempt of Congress, we are now concerned that the Justice Department and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) may be even more motivated to engage in acts of retaliation against the whistleblowers who brought this matter to light. We just learned that ATF senior management placed two of the main whistleblowers who have testified before Congress about Fast and Furious under the supervision of someone who vowed to retaliate against them.

Senator Grassley disclosed whistleblower allegations to the ATF about Operation Fast and Furious on January 27, 2011. At that time, Scot Thomasson was serving as Chief of ATF's Public Affairs Division. According to a direct eyewitness account, shortly after the allegations became public, he stated: "We need to get whatever dirt we can on these guys [the whistleblowers] and take them down." This information was made public on May 3, 2012 in the House Oversight and Government Reform Committee's memorandum accompanying its draft contempt report.¹ Not included in the report is more explicit language. Thomasson was also allegedly heard to have said: "All these whistleblowers have axes to grind. ATF needs to f—k these guys." When asked if the whistleblower allegations were true, Thomasson purportedly said he didn't know and didn't care. It is difficult to understand why ATF leadership would put two of these

¹ Memorandum from Chairman Darrell Issa to Members of the Committee on Oversight and Government Reform (May 3, 2012), at 12.

courageous whistleblowers at the mercy of an individual who made such reckless, irresponsible, and inaccurate comments about them 18 months ago.

As we have learned, Thomasson had been aware of concerns about Operation Fast and Furious two weeks before Senator Grassley's first letter. On January 11, 2011, Special Agent in Charge (SAC) of the Phoenix Field Division William Newell e-mailed Thomasson: "Just heard Melson's coming for the Fast/Furious press conf on the 25th. I hope he realizes how politically charged Arizona is right now especially regarding gun issues, was that way even before the Tucson shooting."² By the next day, the Public Affairs Division at ATF Headquarters had prepared internal talking points that specifically anticipated the issue of gunwalking.³ The January 12, 2011 talking points were drafted to respond to such sample questions as:

Some media reports, referencing an anonymous ATF official, claim that ATF knowingly "walked" about 1,900 firearms across the U.S.-Mexico border as part of this operation. What can you tell me about that?

...

We understand that a firearm bought in connection with this ATF investigation was used to murder Border Patrol Agent Brian A. Terry. Can you please comment on this information?⁴

Thomasson was also involved in the process at ATF and the Justice Department of responding to Senator Grassley's January 27, 2011, letter.⁵

Since allegations about Thomasson's desire to retaliate against whistleblowers have been public since May 3, 2012, and since your office should be a firm, independent voice within the Department to protect whistleblowers from retaliation, please undertake a review to determine: (1) what steps the Department has taken, if any, to admonish Thomasson about such retaliatory remarks, (2) how someone who expressed Thomasson's contempt for whistleblowers was chosen to become the Division Chief of the Firearms Operations Unit and given supervisory responsibility over those very same whistleblowers, and (3) what steps, if any, are being taken to ensure that Thomasson

² E-mail from William Newell to Scot Thomasson (Jan. 11, 2011) [HOCR 005479] (Attachment 1).

³ ATF Official Statements, "Operation: Fast and Furious and Corresponding Investigations" (Jan. 12, 2011) [HOCR 005543-005546] (Attachment 2).

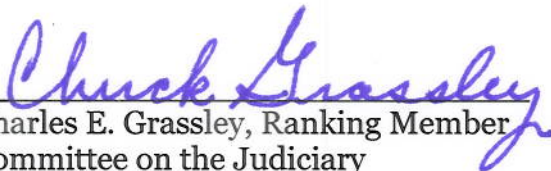
⁴ *Id.* at 2.

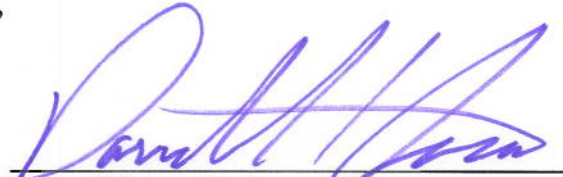
⁵ See, e.g., e-mail from Gregory Rasnake to Ron Weich, et al. (Jan. 27, 2011) [HOCR 003637] (Attachment 3).

does not use his new position to engage in a campaign of retaliation along the lines he expressed a desire to conduct last year.

We would appreciate a response as soon as possible, but by no later than July 6, 2012. If you have any questions concerning this matter, please contact Tristan Leavitt of Senator Grassley's staff at (202) 224-5225, or Henry Kerner of Chairman Issa's staff at (202) 225-5074. We look forward to receiving your response.

Sincerely,


Charles E. Grassley, Ranking Member
Committee on the Judiciary
U.S. Senate


Darrell Issa, Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

cc: The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary, U.S. Senate

The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform, U.S. House of Representatives

The Honorable James M. Cole
Deputy Attorney General, U.S. Department of Justice

B. Todd Jones
Acting Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives

Attachment 1

From: Newell, William D.
To: Mangan, Thomas G.
Sent: 1/11/2011 9:42:34 AM
Subject: Fw: Todays clips

Just letting them know....

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Newell, William D.
To: Thomasson, Scot L.
Sent: Tue Jan 11 09:37:37 2011
Subject: Re: Todays clips

Thanks, have used it several times before because I stand by it 100%. Just heard Melson's coming for the Fast/Furious press conf on the 25th. I hope he realizes how politically charged Arizona is right now especially regarding gun issues, was that way even before the Tucson shooting.

NOTICE: This electronic transmission is confidential and intended only for the person(s) to whom it is addressed. If you have received this transmission in error, please notify the sender by return e-mail and destroy this message in its entirety (including all attachments).

From: Thomasson, Scot L.
To: Newell, William D.
Sent: Tue Jan 11 09:34:06 2011
Subject: Todays clips

-
Bill,

Great Quote in today's clips;

"This investigation is further proof of the relentless efforts by Mexican drug cartels to illegally acquire large quantities of firearms in the U.S. for use in the ongoing Mexican drug war," said Bill Newell, Special Agent in Charge of the ATF Phoenix Field Division. "This investigation is also further proof that the 'straw purchase' of firearms continues to be a significant problem. Those individuals that knowingly falsify ATF firearms forms to supply Mexican drug cartels with firearms have as much blood on their hands as the criminals that use them."

Scot L. Thomasson
Chief
ATF Public Affairs Division
Washington, DC
Desk RC-1
Cell RC-1

HOCR DOJ 005479

Attachment 2



Operation: Fast and Furious and Corresponding Investigations
(1/12/11)

Proposed Opening Statement

- The violence inflicted by the cartels on the citizens of Mexico has reached epidemic proportions. To think that this violence does not affect the United States is naïve; and Agent Terry's murder is a painful reminder of that fact. Illegally obtained firearms are the tools of the trade used by the cartels to protect their criminal enterprise and terrorize the public. Unlike the drugs that they supply, these illegal firearms can stay in circulation indefinitely and cause death and destruction for decades. It is the responsibility of the men and women of ATF to disrupt the flow of firearms to these criminals and protect the public from violent crime.

Statements

- In October 2009, ATF, in partnership with DEA, ICE, IRS, and the Phoenix Police Department, began an OCDETF investigation into a firearms trafficking organization funded by the violent Sinaloa Drug Trafficking Organization (DTO).
- This criminal organization is responsible for trafficking hundreds of firearms into Mexico, using firearms in furtherance of drug trafficking, drug smuggling, wire fraud, and bulk currency smuggling.
- From October 2009 through October 2010, this organization, through the use of numerous straw buyers, purchased approximately \$1.25 million in firearms from FFLs in the Phoenix area and trafficked the firearms into Mexico and other locations within the United States.
- During the course of this investigation, ATF and our law enforcement partners utilized a variety of investigative techniques to identify a large number of co-conspirators and disrupt the illegal activities of this criminal enterprise by seizing hundreds of firearms and narcotics.

Questions and Answers

- **Some media reports, referencing an anonymous ATF official, claim that ATF knowingly “walked” about 1,900 firearms across the U.S.-Mexico border as part of this operation. What can you tell me about that?**

Or

- **The news release/indictment indicates that ATF waited until nearly 2,000 guns were illegally purchased before arresting the straw buyers in this case. Why did ATF wait so long?**

ANSWER: It's not against the law for an individual to purchase 10, 20 or 50 or even 100 guns at one time. It's not illegal to own or possess hundreds of guns; however, it is illegal to straw purchase firearms for those who cannot possess them legally. Operation Fast and Furious became a long-term investigation because of the amount of time it took to gather enough evidence against those who were supplying these violent criminals with the tools of their trade. We needed to ensure that when we did arrest these individuals, justice would be served.

ANSWER: Knowing what it takes to prosecute these types of federal violations is the best way to understand why this investigation took as long as it did and utilized so many resources. Investigations of this type are often long and complicated due to the fact that firearms are a legal commodity being diverted for illegal use. When conducting these investigations we have found that the end user of often shrouded by many layers of straw purchasers and middlemen whose sole purpose is to hide the connection between the first retail purchaser and the violent criminal. Determining when the firearm leaves legal commerce can be extremely difficult and therefore hard to prove.

- **Border Patrol Agent Brian A. Terry was shot and killed after he and his team encountered several suspects near Rio Rico, Ariz. At least four suspects are in custody while one is still being pursued. Was a gun trafficked in this case used in the murder?**

Or

- **We understand that a firearm bought in connection with this ATF investigation was used to murder Border Patrol Agent Brian A. Terry. Can you please comment on this information?**

ANSWER: The death of Agent Terry is tragic and is a sad and dark day for all of law enforcement. We've lost one of our own. This is another example of the dangers faced by law enforcement every day across this country when pursuing these violent criminals.

ANSWER: Agent Terry's death is the exact reason why we must continue going after those who are determined to destroy the lives of so many innocent individuals in our communities by plying their illicit trade. For those who would say it is Mexico's problem, I say Agent Terry's death and all of those who have perished because of this violence prove that this challenge belongs to everyone.

ANSWER: The investigation into the murder of Agent Terry is active and ongoing. ATF has pledged its support and resources to bring to justice the perpetrators who are guilty of that crime. I won't say anything here today to jeopardize that investigation or the subsequent prosecution of those responsible for this terrible crime.

ANSWER: The murder of Agent Terry is a tragic loss that has been felt throughout the United States and underscores the dangers that law enforcement officers face every day. As the investigation continues into this heinous crime, our hearts go out to Agent Terry's family and his fellow Border Patrol Agents who continue to risk their lives to protect the citizens of our great Country.

- **Today ATF agents arrested 20 individuals in this investigation. What kind of impact will that make on the Sinaloa Cartel?**

ANSWER: We hope the arrests have a crippling effect on the cartel's supply line for guns. The Project Gunrunner initiative is designed to stem the flow of firearms to Mexico drug trafficking organizations.

ANSWER: This complex source of firearms has dried up thanks to the work of ATF and our law enforcement partners, unfortunately there are many more firearms trafficking rings and we are in the process of identifying and investigating other organizations employed by cartels in America.

ANSWER: The hard work of all the people involved in this investigation has denied the tools of trade to this violent criminal organization, minimizing their ability to terrorize communities on both sides of the border.

- **Historically, straw buyers who are prosecuted rarely get time. If they do, it's only a year or two. What impact do you expect to have by indicting these 20 straw buyers?**

ANSWER: Criminals who want guns or traffic in guns seek people with clean criminal records to purchase firearms on their behalf. That is against the law. With convictions, these 20 individuals will no longer be able to supply tools of the trade to criminals.

ANSWER: To deter would-be criminals and to send a message that trafficking firearms is a crime that will impact them for the rest of their lives. Simply put, crime doesn't pay.

ANSWER: To send a message to drug cartels that ATF and its law enforcement partners will use all enforcement methods available to disrupt and dismantle their criminal activities.

###

Attachment 3

From: Rasnake, Gregory R. (ATF)
To: Weich, Ron (SMO); Agrast, Mark D. (SMO)
CC: Burton, Faith (SMO); Kralovec, Jamie (JMD); McDermond, James E. (ATF); Gonzales, Mary (OLA); Thomasson, Scot L. (ATF); Hoover, William J. (ATF); Melson, Kenneth E. (ATF)
Sent: 1/27/2011 4:14:04 PM
Subject: RE: A Letter from Ranking Member Charles E. Grassley

Just got off the phone with Grassley's staffer.

He wants these questions/issues answered/addressed:

- 1.) That firearms were sold to known or suspected traffickers in AZ and that the FFL informed ATF that he had concerns,
- 2.) That ATF asked the dealer to continue making the sales in furtherance of their investigation,
- 3.) That two of these weapons were recovered from the scene of the 12/14/2010 firefight that killed CBP Agent Brian Terry and that one of those weapons was actually used to kill Agent Terry.
- 4.) An overview of how Project Gunrunner works.

I mentioned that I didn't know how much information we would be able to share with them because this is an open case/investigation. They cited numerous occasions where they have been briefed on open cases and stated that they need to be briefed to assess whether the information they have is viable or not. They claim to have "documentation" that confirms their concerns. They are firm on their date of doing something by next Thursday, 2/3/2011.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

RC-1

From: Rasnake, Gregory R.
Sent: Thursday, January 27, 2011 2:42 PM
To: Weich, Ron (SMO); Agrast, Mark D. (SMO)
Cc: Burton, Faith (SMO); Kralovec, Jamie (JMD) (SMO); McDermond, James E.
Subject: A Letter from Ranking Member Charles E. Grassley
Importance: High

We need to discuss this very sensitive issue ASAP. I assume that the *Linder Letter* will guide our response.

Greg Rasnake
DOJ- Bureau of Alcohol, Tobacco, Firearms & Explosives
Chief - Office of Legislative Affairs

RC-1

From: Downey, Brian (Judiciary-Rep)
Sent: Thursday, January 27, 2011 11:59 AM
To: 'ken.melson@RC-1'; 'william.hoover@RC-1'; 'vivian.michalic@RC-1'
Cc: Foster, Jason (Judiciary-Rep); 'william.hoover@RC-1'
Subject: A Letter from Ranking Member Charles E. Grassley
Importance: High

Hello,

Please find attached a letter from Ranking Member Grassley. Please confirm receipt, thank you.

Sincerely,

Brian

Brian M. Downey
Investigative Assistant
U.S. Committee on the Judiciary
Ranking Member Charles E. Grassley
U.S. Senate
Washington, DC

RC-1